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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,147	06/30/2000	Jay S. Walker	99-110	2957

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EXAMINER	
CARLSON, JEFFREY D	
ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/609,147	WALKER ET AL.	
	Examiner	Art Unit	
	Jeffrey D. Carlson	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *75-108* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *75-108* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the paper(s) filed 10/3/05. Although applicant's response appears to be presented in a format consistent with an Appeal Brief and that applicant has referred to the claims as "appealed" [pg 14 – sec D3], the examiner is treating the response as an amendment to claim 75 and supporting arguments. The case is not under appeal.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 75, 76, 79-97, 99-103, 105-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raven et al (US5429361) in view of Plainfield et al (US5893075).

Regarding claim 75, 81, 106, 107, 108, Raven et al teaches programmed slot machines and networks which identify players and deliver promotional messages to the players [abstract]. Promotional messages may include notices of special events, special rates, etc. [5:58-61]. Frequent players can earn bonus or frequent player points by spending certain amounts [8:25-27]. At the slot machine, the player is identified via his playerID card and his history/accumulation of points is displayed [7:52-56]. Special players are identified and treated differently based on their card data and amount being

played [9:60-68]. Although Raven et al teaches that messages may request that the player respond interactively to enter requested information [5:63-64], Raven et al does not teach compensating the player for responding to a survey. Plainfield et al teaches surveying customers and rewarding the customers for responding as a means to create an incentive for participating in the marketing survey. It would have been obvious to one of ordinary skill at the time of the invention to have collected valuable marketing/profile/preference data from select identified customers of Raven et al and to have rewarded them for participation. Plainfield et al teaches rewarding the customers with entry into contests (games of chance), etc and it would have been obvious to one of ordinary skill at the time of the invention to have rewarded the selected identified slot players with any incentive including points in the bonus points system disclosed by Raven et al. Regarding claim 75, 76, 99, 102, 103, it would have been obvious to one of ordinary skill at the time of the invention to have selected any type of player, including losing players, for rewarding participation in a data gathering survey, so that the survey data could be collected for any type of targeted segment or so the reward for survey participation may be offered to those who are losing in order to keep their spirits up. The reward-based survey itself can be taken to be an offer. Regarding claim 106, the signal is clearly after the response is received and is taken to meet the broad "soon after" language.

Regarding claims 79-80, the reward can viewed by the player as "offsetting or "erasing" a loss.

Regarding claim 80, 83-97, Official Notice is taken that it is well known for casinos to "comp" players with free plays/tokens, credits, cash, reduced rates, free rooms and to manipulate the prize tables, activate additional paylines/reels in order to increase the players chance of winning and it would have been obvious to one of ordinary skill at the time of the invention to have provided such as the compensation for the survey taking of Plainfield et al.

Regarding claim 82, Official Notice is taken that video poker machines are well known to be used in casinos and it would have been obvious to one of ordinary skill at the time of the invention to have credited the players with free/bonus points or credits to be used at any machine including video poker (a game of skill).

Regarding claims 100, 101, it would have been obvious to one of ordinary skill at the time of the invention to have provided the survey question(s) at any time where it can be detected that a player is present such as when the reels are spinning, when a card is swiped or when a coin is deposited. All are obvious methods of determining whether a player is present. Further, applicant's claiming of various triggers to send the question is evidence of a lack of criticality regarding such triggers.

Regarding claim 105, any response is taken to be a commitment for providing truthful answers.

4. Claims 77, 78 and alternatively, 76, 84, 102, 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raven et al in view of Plainfield et al and Liverance (US5971850). Liverance teaches that the slot machine can adapt and make

the chance for success easier if the player is losing in order to optimize the player's interest in the game and sustain the time played at the machine [2:24-64]. It would have been obvious to one of ordinary skill at the time of the invention to have targeted losing players of Raven et al and offered them opportunities to complete surveys in order to increase their chances of future winning if they participate and continue playing. Regarding claim 77, Raven et al teaches that entire player histories (i.e. plural sessions) are tracked. Regarding claim 78, any amount losing can be said to be above a threshold of $0.00. The reward-based survey itself can be taken to be an offer.

5. Claim 98 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raven et al in view of Plainfield et al and Paige (US5941772). Paige teaches putting ad logos on slot reels. It would have been obvious to one of ordinary skill at the time of the invention to have provided such ad-enhanced reels with the systems of Raven et al and Plainfield et al in order to exploit the player's gambling attention for advertising revenue. In the obvious case of providing free points/credits/plays, the compensation is taken to be allowing the player to watch and play the ad-enhanced reels.

6. Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raven et al in view of Plainfield et al and Dyer (US5090734). Dyer teaches presenting an advertisement to a user and collecting answers from the user regarding questions about the product/ad. It would have been obvious to one of ordinary skill at the time of the invention to have collected such marketing information with the system of Raven et

al/Plainfield et al in order to gather advertising and product information from casino customers.

Response to Arguments

Applicant argues that examiner has not followed procedural requirements in making the rejections. Examiner disagrees and believes that the rejections are properly formed. In particular, although the examiner must form conclusions based upon one of ordinary skill, he need not explicitly describe, define or characterize such a person. This is particularly true when applicant has made no statements pointing to particular elements proposed by the examiner that applicant believes to be beyond one of ordinary skill. Suffice it to say that the inventors of the applied art represent the type of skill level considered to be ordinary.

Examiner declines to clarify his understanding of the cited case law as requested by the applicant.

Applicant argues that the references do not teach selecting a player based upon a losing gambling history. As pointed out, Raven et al teaches identification of players as well as special treatment for certain players. It would have been obvious to one of ordinary skill at the time of the invention to have transmitted the disclosed interactive questions (taken to meet the broad language of a survey) to any desired individual or type of individual, including losing players. Applicant's argument regarding a lack of teaching/suggestion for "marketing questions" are narrower than the present claim scope - such language does not appear in the claims. As stated previously, any

message that prompts a user to respond is taken to represent a question and reads on the broadly "survey" language. Applicant argues that the examiner simply concludes such a notion, yet it is the examiner's duty to interpret as broadly as reasonable the scope and meaning of claim language.

Applicant argues that claims 79 and 80 require offsetting or erasing a loss. The compensation for answering questions can meet both of those requirements. Whether a reward (regardless of how small) offsets/erases a loss (regardless of how large) is largely up to the player's interpretation. Applicant's method and apparatus claims set forth method steps and structure configured to carry out the method steps. Claim language that describes a player's feelings or reactions to the instant invention (does this small reward offset my losses) does not define applicant's claimed inventive method steps or apparatus. Nonetheless, the examiner has demonstrated how the proposed rejection would read on such language. Further still, the free credits as proposed by the examiner also rewards on offsetting and erasing a gambling loss.

Applicant argues that the Examiner does not provide support or evidence for the Official Notices taken; this is the nature of taking Official Notice. Examiner believes these assertions are well known. It remains unclear whether applicant is arguing the validity of the concept of using Official Notice in a rejection, assertion of the particular evidence asserted or what would have been obvious given such evidence, or perhaps all three. Applicant appears to take issue with a lack of evidence. As examiner has pointed out previously, he relied upon the taking of Official Notice as the evidence.

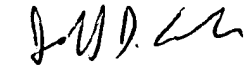
Applicant is free to seasonably challenge this taking of Official Notice, yet applicant is not believed to have properly challenged the Official Notice(s) taken. For example, applicant has yet to challenge the evidence asserted by the examiner that video poker machines were well known before applicant's invention. In fact, applicant admits (08/769085, now US Patent 6186893) in the Background of the Invention that modern slot machines are often networked and many modern slot machines display video reels instead of mechanical reels and further that card faces are vide-based for other slot-style gaming devices such as video poker. Examiner takes this to represent applicant's awareness of the prior existence of video poker machines and cannot see how applicant can argue his taking of Official Notice to this fact. The examiner further cites Acres (US6565434) as evidence that bonus awards (cash, credits, cars, etc [4:29-35]) are known to be given to gamblers in a casino and that multiple wagered credits increases the payout (taken to be an increased prize table). Use of free credits are also taken to meet a free gambling tokens, ability to play a higher denomination machine, a free play and credit. Crawford (US6270412) teaches an additional slots for each wager [6:66+]. Ishida (US4964638) teaches rounding up a payout [4:68+]. Marnell, II (US5259613) teaches a free (I.e. subsidized) room [2:5-7]. Brosnal et al (US6656040) teaches the ability to make additional wagers on additional paylines. These are examples of the types of evidence represented by the examiner's taking of Official Notice which would have been obvious to one of ordinary skill at the time of the invention to have given to a gambler taking part in a survey of Raven et al in view of Plainfield et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey D. Carlson whose telephone number is 571-272-6716. The examiner can normally be reached on Mon-Fri 8a-5:30p, (off on alternate Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey D. Carlson
Primary Examiner
Art Unit 3622

jdc